

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 972 of 1996

in

SPECIAL CIVIL APPLICATION No 2452 of 1989

WITH
CIVIL APPLICATION NO. 7411 OF 1996 &
CIVIL APPLICATION NO. 8878 OF 1996.

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION BANK OF INDIA

Versus

KAMLESH G SHAH

Appearance:

MR KM PATEL for Petitioner
MR. T.R.MISHRA, for Respondent.

CORAM : THE ACTING CJ R.A.MEHTA and
MR.JUSTICE C.K.THAKKER

Date of decision: 11/02/97

ORAL JUDGEMENT (PER R.A.MEHTA ACT.C.J.)

Admit. With the consent of the learned advocates for the parties, the matter is finally heard.

2. The respondent-workman was dismissed from service of the appellant Nationalised Bank because of the misconduct and using filthy language against superior officer of the Bank in the Bank Premises during the banking hours. The Central Industrial Tribunal held that misconduct was established. However, the Tribunal further held that punishment of dismissal was disproportionately harsh and amounting to victimisation. The Tribunal also observed that " No doubt the workman hurled on abuse which conveyed very obscene, insulting and bad meaning. But the abuse is so common place that many persons use it by force of habit without either understanding the meaning thereof or without any intention to convey the real meaning of the abuse. It is also pertinent to note that the workman gave that abuse while expressing his righteous indignation at the mistake in the calculations of maturity amounts which he wanted to point out to Shri Manoj Shah." Manoj Shah was Accountant and the workman was clerk-cum-cashier. The Tribunal, therefore, held that the punishment was totally unjustified and stoppage of one increment for a year directing the reinstatement of the respondent would have been adequate punishment and, therefore, the Tribunal quashed the dismissal and directed reinstatement with full backwages subject to the stoppage of one increment for one year.

The Bank management preferred Special Civil Application No.2452 of 1989. That petition was admitted and during the pendency of the petition interim relief was granted subject to the compliance with the provisions of Sec.17-B and for back ages 50% was permitted to be withdrawn and 50% was deposited in this court which has been invested. The workman has been paid wages under Sec.17-B for all these years from 1989 to 1996. That amount runs into lacs.

The learned single Judge held that the Tribunal had rightly held that the charge of the respondent employee hurling the abuse of the officiating Branch Manager Shri Manoj Shah was established. However, learned Single Judge has held that it was not necessary for the Tribunal to lend any responsibility to the conduct of the respondent employee by describing his outburst as an expression of righteous indignation. The conduct of the respondent employee of abusing his superior officer in the office of the Bank deserves to be

condemned in no uncertain words. However, the learned Single Judge confirmed the order of the Tribunal regarding full backwages.

The learned Single Judge has considered the question of backwages only on the point of period of gainful employment. The argument of the Bank was that the employee has not led any evidence or not entered the witness box to show that he was not gainfully employed. That would result only to the period during the date of dismissal till the date of the award of the Tribunal. As far as the period after the interim order of this court and till disposal of the Special Civil Application, wages have been paid under Sec.17-B at the rate of last drawn salary and the question is still open about the difference between the last drawn salary and the salary payable on reinstatement.

The workman has been reinstated and only question that remains is quantum of punishment and backwages.

Having regard to the fact that when filthy abuses were given by a white collar educated bank employee, who is a graduate, to his superior in the Bank, misconduct is required to be taken more seriously. The learned Single Judge has observed that the conduct of the respondent employee of abusing his superior officer in the office of the Bank deserves to be condemned in no uncertain words. But condemnation would be a mere paper condemnation without any effect.

The learned counsel for the appellant Bank has referred to and relied upon the judgment of the Supreme Court in the case of Ram Kishan v. Union of India & ors. 1996 1 CLR (Current Law Report) 26. In that case, a constable was dismissed from service on the charge of giving abuse to his superior. The Inquiry Officer recommended a finding not guilty. The Disciplinary authority disagreed and held him guilty. The Supreme Court held that on the facts and circumstances of the case, the punishment of dismissal was harsh and disproportionate to the gravity of charge. The Supreme Court observed in para 6 as follows:

"When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given

circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated."

Then in para 7, the Supreme Court held that since the appellant himself is responsible for the initiation of the proceedings, the workman was not entitled to backwages, but all other consequential benefits would be available to him.

Relying on this judgment, the learned counsel for the appellant submitted that in the present case, the workman is a Clerk-cum-Cashier in a Nationalised Bank. He is a graduate and in white-collar job and in the environment of the Bank this abuse is uttered. Even if other person had committed any error in calculation use of abusive language by an educated bank employee against his superior cannot, under any circumstances, be taken lightly. That police constable was denied of backwages and, therefore, it is submitted that in the present case the High Court should refuse back wages from the date of dismissal till the date of dismissal.

Other case relied upon by the learned counsel for the appellant is New Shorrock Mills v. Maheshbhai T. Rao, 1996 (6) SCC 590. It was the case of a Badali worker, abusing Deputy Manager and threatening that the Mill Officers could not be safe outside the Mill and that he might murder few of them. The said act of misconduct was proceeded by awarding of punishment in the past for other acts of misconduct on a number of other occasions. In these circumstances, the Supreme Court held that the punishment of discharge was disproportionate so as to warrant judicial interference and, therefore, reinstatement which was granted by the Labour Court and confirmed by the High Court was set aside. The Supreme Court observed that the Labour Court had completely misdirected itself in ordering reinstatement of the respondent with forty per cent back wages.

Relying on these judgments, it is submitted that the Labour Court ought not to have interfered with the order of dismissal or order of punishment of dismissal and in any case ought not to have awarded any backwages.

On behalf of the respondent workman Mr.T.R.Mishra, learned counsel has submitted that when the Tribunal and the learned Single Judge have exercised their discretion and have concurrently agreed to award full backwages, there is no reason for any interference

in Letters Patent Appeal. He has relied on judgment of the Supreme Court in the case of Ved Prakash Gupta vs. M/s Delton Cable India (P) Ltd. 1984(2) SCC 569. The workman was a Security Inspector under the Security Officer on a total monthly salary of Rs.581/-. He was dismissed on the charge of abusing co-worker in filthy language. There was no previous adverse remarks against the workman shown and extreme penalty of dismissal was held to be disproportionately excessive and dismissal was set aside and reinstatement was ordered with full backwages. The Supreme Court held that no responsible employer would ever impose in like circumstances the punishment of dismissal of the employee and victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the workman and, therefore, the Supreme Court directed reinstatement with full backwsages and other benefits including continuity of service. In that case the Supreme Court has come to the conclusion that it was an act of victimisation or unfair labour practice and the charge was flimsy. It was not a case where the Supreme Court had thought of substituting punishment by any other punishment. In the present case, not only the charge is held proved but punishment is also to be substituted. In the present case misconduct of an educated employee hurling filthy abuse to his superior officer is established and is serious enough to warrant major punishment though setting aside of dismissal may not be interfered with.

The learned counsel for the respondent also relied on the judgment of the Supreme Court in the case of Rama Kant Misra v. The State of U.P. & Ors. 1982 UJ (SC) 862. In that case the workman was a low paid employee. It is alleged against him to have used threatening language. The Supreme Court considered that there was no blameworthy conduct of the appellant during the period of 14 years' service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture.

Inferences and conclusions drawn by the Supreme Court in the facts of that case are not applicable to the

facts of the present case where, as discussed earlier, a graduate bank employee has used filthy abusive language against his superior intentionally and with a view to insult and inhumiliate him.

The learned counsel for the respondent has also referred to the judgment of the Supreme Court in the case of Scooter India Limited, Lucknow vs. Labour Court, Lucknow and others, 1989 Supp (1) SCC 31. In that case the Labour Court had granted reinstatement with 75 per cent back wages. The Labour court had observed that "the workman had unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore, his conduct, motivated by ideals which are not relevant, has been far from satisfactory. In so far as it was rough, bordering on rudeness and with highly exaggerated sense of his duties." This was not a case where filthy abuses have been given by educated employee to his superior. Even in that case 25 per cent of backwages were denied and the Supreme Court has confirmed.

Judgment in the case of Sardarsingh Devsingh v. Dist. Superintendent of Police, Sabarkantha & ors., 1985 GLH 940 has no application to the facts of the present case where it is a case of dismissal on account of unauthorised absence of 150 days.

Having regard to the finding of the Labour Court as well as the learned Single Judge that misconduct of giving filthy and vulgar abuses is established and the fact that the workman is a well educated employee of a Nationalised Bank, it appears that even though the punishment of dismissal having been set aside is not challenged, the question still survives as to what should be the alternative punishment and denial of part of backwages would also be a punishment.

One more aspect is that the workman has not stated and not entered the witness box and not proved that he was not gainfully employed for all these years, it would be just and proper to hold that he shall be denied backwages to the extent of 50% from the date of dismissal till the date of reinstatement. On that basis the past backwages shall be calculated. However, if more than 50% wages have already been paid, the same shall not be recovered. The appellant shall, therefore, carry out calculation on the basis that the workman has continued in service for all these years and earn wages including revision in wages (minus one increment which is stopped for one year by the Labour Court) and pay 50% of that

amount to the workman. However, under interim orders in Special Civil Application whatever amount that has been paid to the workman by way of wages under Sec.17-B or towards backwages, the same shall be adjusted against 50% amount payable and if there is any short fall, the Bank shall pay to the workman. If the workman has been paid any excess to 50% the same shall not be recovered.

The amount which has been deposited by the appellant bank and lying in the deposit with the High Court, shall be returned with accrued interest to the appellant. The workman had withdrawn an amount of Rs.43,000/-. That shall remain with him and the security furnished by him will stand cancelled and the workman who has deposited Rs.18000/- in the Central Bank of India, Lathi Bazaar Branch, Ahmedabad will now be free from any charge and the petitioner will be entitled to withdraw the same.

Letters Patent Appeal is accordingly allowed to that extent. No costs.
